

APPEAL NO. 040786
FILED JUNE 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 3, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____ or _____; (2) the date of the claimed injury is _____; (3) because the claimant did not sustain a compensable injury, she does not have disability; and (4) the claimed injury did not occur while the claimant was in a state of intoxication and the respondent (carrier) is not relieved of liability for compensation for this reason. The claimant appealed, asserting that the hearing officer improperly admitted medical evidence and had these medical documents been excluded a favorable decision for the claimant would have occurred. The carrier responded, urging affirmance. The hearing officer's date of injury and intoxication determinations have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant complains that the hearing officer improperly admitted Carrier's Exhibits Nos. 1, 2, 3, and 18 that purport to show medical evidence from medical experts, and that the hearing officer gave improper weight to the complained-of exhibits. At the CCH, the claimant complained that the carrier did not respond properly to interrogatories to enable the claimant to check the medical experts' backgrounds and basis of their testimony. The carrier responded that it did respond properly and that the medical documentation was exchanged timely. The hearing officer overruled the claimant's objection and admitted Carrier's Exhibits Nos. 1, 2, 3, and 18. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was in error and that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Under the facts of this case, we conclude that the claimant has not shown that the error, if any, in the admission of the complained-of evidence amounted to reversible error.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on or about _____ or _____. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the

relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record demonstrates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge